

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK E. BROWN,

Defendants.

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Case No. CR-06-153-R

ORDER

Before the Court is the Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Doc. No. 137) filed by Defendant Mark Brown. The motion was originally filed in the United States Court of Appeals for the Tenth Circuit and has since been transferred to this Court. (Doc. No. 136).

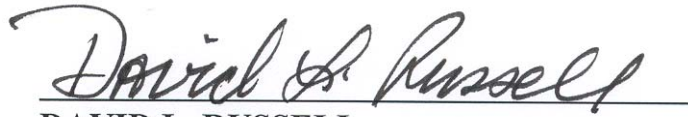
In accordance with the Tenth Circuit’s finding, the Court intends to construe Mr. Brown’s motion to be a first—not a second or successive—§ 2255 motion. This “recharacterization can have serious consequences for [Mr. Brown].” *Castro v. United States*, 540 U.S. 375, 377 (2003). So, before proceeding, the Court must inform Mr. Brown of its intent to recharacterize, warn him that the recharacterization will subject subsequent § 2255 motions to the law’s second or successive restrictions, and provide him with an opportunity to withdraw, or to amend, his filing. *Id.*; *United States v. Kelly*, 235 F.3d 1238, 1242 (10th Cir. 2000).

Accordingly, the Court hereby notifies Mr. Brown of its intent to recharacterize his motion as a first § 2255 motion. Mr. Brown should also be aware that federal prisoners

generally have only one opportunity to file a § 2255 motion. *Prost v. Anderson*, 636 F.3d 578, 583 (10th Cir. 2011). Thus, federal prisoners are barred from attacking their convictions through second or successive § 2255 motions except in very limited circumstances. *See Coleman v. United States*, 106 F.3d 339, 340, 341 (10th Cir.1997). Finally, the Court hereby permits Mr. Brown to withdraw, or to amend, his filing. Mr. Brown does not, however, have a right to counsel in his pursuit of habeas relief. *United States v. Martinez*, 507 F. App'x 815, 816 (10th Cir. 2013).

For the reasons set forth herein, Defendant is ordered to withdraw, or to amend, his filing (Doc. No. 137) by December 16, 2019. Otherwise, the Court will construe Defendant's filing as his first § 2255 motion and proceed accordingly.

IT IS SO ORDERED this 1st day of November 2019.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE